

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



STATE OF OHIO.

APPEAL NO. C-990066

Appellee,

vs.

ENTRY GRANTING MOTION TO
FILE SUPPLEMENTAL BRIEF
AND EXTENDING TIME

RICHARD J. KLEIN

Appellant,

This cause came on to be considered upon the PRO SE motion of the appellant filed herein for leave to file an amended, supplemental brief, and to extend time, and

The Court, upon consideration thereof, finds that the motion is well taken and is granted.

Wherefore, since this case is set for its merit hearing on October 12, 1999 the appellant shall have until September 7, 1999 to file his supplemental brief and the appellee shall have until September 30, 1999 to file its response.

To The Clerk:

Enter upon the Journal of the Court on 8/13/99 per order of the Court.

By: [Signature] (Copies sent to all counsel)

Richard J. Klein Presiding Judge

P. EXHIBIT B

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO



STATE OF OHIO

APPEAL NO. C-990066

Appellee,

vs.

ENTRY GRANTING JOINT
MOTION TO EXCEED THE PAGE
LIMIT

RICHARD JOSEPH KLEIN

Appellant,

This cause came on to be considered upon the joint motion of counsel filed herein for leave to file briefs exceeding the page limit, and

The Court, upon consideration thereof, finds that the motion is well taken and is granted.

To The Clerk:

Enter upon the Journal of the Court on 8/5/99, per order of the Court.

By: [Signature]
Presiding Judge

(Copies sent to all counsel)

P. EXHIBIT C

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

FILED
COURT OF APPEALS

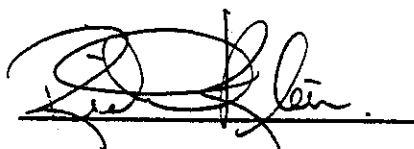
JUN 15 2009

JAMES CISELL
CLERK OF COURTS
HAMILTON COUNTY

STATE OF OHIO	:	TRIAL CASE NO. B-9700308
Plaintiff/appellee	:	APPEAL CASE NO. C-970788
	:	APPEAL CASE NO. C-990066
vs.	:	MOTION TO REDUCE NUMBER OF COPIES
	:	
RICHARD J. KLEIN pro se	:	
Defendant/appellant	:	

RICHARD J. KLEIN, Defendant/Appellant pro se, moves this court pursuant to Criminal Rule 32(B)(c), and requests that copies be made of necessary documents and motions, at State's expense, due to indigency of defendant. The basis and evidence for this request for order is fully set forth in memorandum attached.

Respectfully submitted,



RICHARD J. KLEIN 350-022

L.C.I. P.O. Box 56

Lebanon, Ohio 45036

P. EXHIBIT D

MEMORANDUM

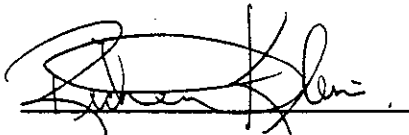
On December 3, 1999, The First District Court of Appeals entered judgment affirming conviction in said case. Appellant was not notified of this judgment until February 27, 2000. Appellant's desire is to file for delayed reconsideration under App.R. 26(B). On May 18, 2000, Appellant filed a motion for delayed reopening with the Clerk of Courts of Appeals (Exhibit 1). With this motion was an affidavit of indigency and a letter requesting the clerk make copies for service, and further stating the reason for the request that appellant is indigent (Exhibit 2). On May 19, 2000, the Clerk of Courts refused filing and returned motion with a letter that appellant must furnish another copy with this filing (Exhibit 3).

Appellant has been established, by this court, to be indigent when it appointed appellate counsel (Exhibit 4). The issue of indigency is res judicata since it has been established. Appellant did not receive adequate review on appeal due to ineffective assistance of counsel. Due Process requires an appellant receive effective assistance of counsel on his first appeal as of right, *Evitts v. Lucey* 105 S.Ct. 830, 469 U.S. 387, and an adequate review of conviction. It is well established that appellant is indigent, and in order to pursue exhaustion of Stat remedies and fully develop the record on appeal appellant needs to be permitted to file for delayed reopening. Appellants inability to purchase copies and secure funds for postage are preventing litigation of this case. Criminal Rule 32(B)(c) provides for indigents' to receive documents if they are unable to pay for them, and since appellant did not receive adequate review on his first appeal the case needs to be reconsidered on its merits. Denial of adequate review would be a denial of appellants due process rights, since, due process attaches to appellate proceedings. Here, appellant is unable to pay for documents necessary to an appeal, Crim.R. 32(B)(c) "documents will be provided without cost," absent effective assistance of appellate counsel appellant has not received the adequate

review of conviction that due process requires. Woodard v. Ohio A.P.A. (1997 C.A. 6), 107 F.3d 1178, 117 S.Ct. 2507. Without copies of necessary documents due process is being denied.

Appellant respectfully requests an order for copies to be made of this motion 26(B) and interdepartmental service made to the prosecutor.

Respectfully submitted,



RICHARD J. KLEIN 350-022

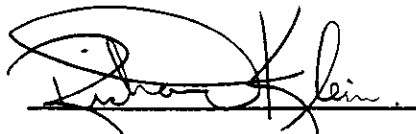
L.C.I. P.O. Box 56

Lebanon, Ohio 45036

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the forgoing document has been served on the prosecutors office, 230 East Ninth Street, Cincinnati, Ohio 45202, by Certified Mail on this 13th day of June 2000.

Respectfully submitted,



RICHARD J. KLEIN 350-022

L.C.I. P.O. Box 56

Lebanon, Ohio 45036

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

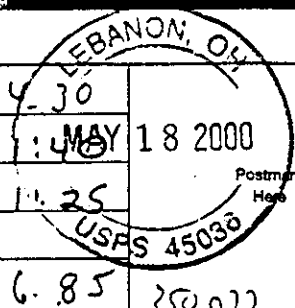
STATE OF OHIO	:	TRIAL CASE NO. B-9700308
Plaintiff/appellee	:	APPEAL CASE NO. C-970788
	:	APPEAL CASE NO. C-990066
vs.	:	EXHIBIT NO. 1
	:	
RICHARD J. KLEIN pro se	:	
Defendant/appellant	:	

EXHIBIT NO. 1

Certified mail receipts for filing of motion 26(B)

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

7000 0520 0015 5139 0174

Postage	\$ 4.30	
Certified Fee	1.40	
Return Receipt Fee (Endorsement Required)	1.25	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 6.85	

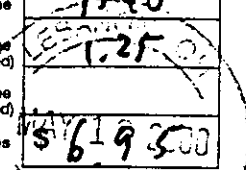
350 022

Recipient's Name (Please Print Clearly) (To be completed by mailer)
 Clerk of Courts
 Street, Apt. No., or PO Box No.
 230 E 9th St.
 City, State, ZIP+4
 Cin. OH. 45202

PS Form 3800, February 2000 See Reverse for Instructions

U.S. Postal Service
CERTIFIED MAIL RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)

7000 0520 0015 5139 0167

Postage	\$ 4.30	
Certified Fee	1.40	
Return Receipt Fee (Endorsement Required)	1.25	
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$ 6.95	

350 022

Recipient's Name (Please Print Clearly) (To be completed by mailer)
 Clerk of Court of Appeals
 Street, Apt. No., or PO Box No.
 230 E. Ninth St.
 City, State, ZIP+4
 Cin. OH. 45202

PS Form 3800, February 2000 See Reverse for Instructions

UNITED STATES POSTAL SERVICE

15036/0056

First-Class Mail
 Postage & Fees Paid
 USPS
 Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

LECI
 Box 56
 Leb. OH 45636
 350022

15036/0056

Certified Mail receipt
 Filing of Motion 26(5) May 18, 2000
 (Date of Mailing of Motions May 18, 2000).

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO : TRIAL CASE NO. B-9700308
Plaintiff/appellee : APPEAL CASE NO. C-970788
 : APPEAL CASE NO. C-990066
vs. : EXHIBIT NO. 2
 :
RICHARD J. KLEIN pro se :
Defendant/appellant :

EXHIBIT NO. 2

Affidavit of indigence and letter to the Clerk of Courts requesting the clerk make copies and service due to appellants indigency status.

RICHARD J, KLEIN 350-022
Lebanon Conn. Inst
P.O. Box 56
Lebanon, Ohio 45036

May 11, 2000,

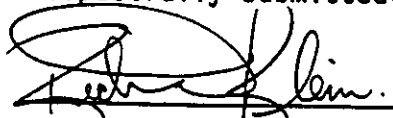
James Cissell
Clerk of Courts of Appeals
230 East Ninth Street, Room 12100
Cincinnati, Ohio 45202

Dear Clerk of Courts,

This is packet two of two. Enclosed please find one Motion to Delayed Reopening, Application for reopening, exhibits parts one of two and two of two, one appeal brief, and an affidavit of indigency.

I am incarcerated and indigent, and cannot afford copies to pursue this action. Please copy enclosed documents and forward copies to appropriate parties in this case. Also, please return a time stamped copy of all cover pages. Thank you.

Respectfully submitted,



RICHARD J. KLEIN 350-022
Defendant/Appellant
L.C.I. P.O. Box 56
Lebanon, Ohio 45036

AFFIDAVIT OF INDIGENCY

STATE OF OHIO)
)SS:
WARREN COUNTY)

I Richard J. Klein 350-022-295-60-7484, being duly cautioned and sworn deposes and states the following:

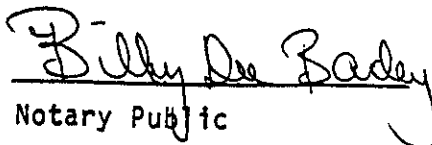
I am without the necessary funds with which to pay for the costs of this action and that I am without any possessions, real or personal property of sufficient value in which to offer as security for such costs, and that I am truly indigent within the meaning of law.
Affiant further sayeth naught.

Respectfully submitted,



Richard J. Klein 350-022
Lebanon Correctional Inst.
P.O. Box 56
Lebanon, Ohio 45036

Sworn and subscribed before me this 11th day of May 2000.


Notary Public

BILLY DEE BAILEY
Notary Public, State of Ohio
My Commission Expires Mar. 27, 2005

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO	:	TRIAL CASE NO. B-9700308
Plaintiff/appellee	:	APPEAL CASE NO. C-970788
	:	APPEAL CASE NO. C-990066
vs.	:	EXHIBIT NO. 3
	:	
RICHARD J. KLEIN pro se	:	
Defendant/appellant	:	

EXHIBIT NO. 3

Response from the Clerk of Courts when filing was denied



JAMES CISSELL
HAMILTON COUNTY CLERK OF COURTS

Lisa Boebinger, Supervisor
Common Pleas – Appellant Division
230 E. Ninth Street, 12th Floor
Cincinnati, Ohio 45202
513-946-3746 Fax: 513-946-3744
www.courtclerk.org

MAY 19, 2000

MR RICHARD KLEIN
P.O. BOX 56
LEBANON OHIO 45036

MR KLEIN,

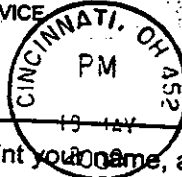
WE ARE RETURNING YOUR PAPERWORK FOR YOUR APPLICATION
AND MOTION FOR REOPENING.

ENCLOSED IS A COPY OF THE RULES, STATING THAT YOU NEED
TO PROVIDE US WITH AN ADDITIONAL COPY FOR SERVICE.

ALSO, YOUR EXHIBITS STATE THAT THEY ARE TWO OF TWO.
I FOUND NO ONE OF TWO TO GO WITH IT.

LISA BOEBINGER
SUPERVISOR
CLERK OF COURT APPELLATE DIVISION

UNITED STATES POSTAL SERVICE



First Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Lebanon Correctional

P.O. Box 56

Lebanon Ohio

45036

R. Klein 050-022

036+0056 10

the later. The filing of a motion to certify a conflict does not extend the time for filing a notice of appeal. A motion under this rule shall specify the issue proposed for certification and shall cite the judgment or judgments alleged to be in conflict with the judgment of the court in which the motion is filed.

(B) Parties opposing the motion must answer in writing within ten days after the filing of the motion. Copies of the motion, brief, and opposing briefs shall be served in the manner prescribed for the service and filing of briefs in the initial action. Oral argument of a motion to certify a conflict shall not be permitted except at the request of the court.

(C) The court of appeals shall rule upon a motion to certify within sixty days of its filing.

Effective 7-1-94)

RULE 26. Application for reconsideration, application for reopening

(A) **Application for reconsideration.** Application for reconsideration of any cause or motion submitted for appeal shall be made in writing before the judgment or order of the court has been approved by the court and filed by the court with the clerk for journalization within ten days after the announcement of the court's decision, whichever is the later. The filing of an application for reconsideration shall not extend the time for filing a notice of appeal in the Supreme Court.

Parties opposing the application shall answer in writing within ten days after the filing of the application. Copies of the application, brief, and opposing briefs shall be served in the manner prescribed for the service and filing of briefs in the initial action. Oral argument of an application for reconsideration shall not be permitted except at the request of the court.

(B) **Application for reopening.** (1) A defendant in a criminal case may apply for reopening of the appeal from the judgment of conviction and sentence, based on a claim of ineffective assistance of appellate counsel. An application for reopening shall be filed in the court of appeals where the appeal was decided within ninety days from journalization of the appellate judgment unless the applicant shows good cause for filing at a later date.

(2) An application for reopening shall contain all of the following:

(a) The appellate case number in which reopening was sought and the trial court case number or numbers in which the appeal was taken;

(b) A showing of good cause for untimely filing if the

and all supplemental affidavits upon which the applicant relies.

(3) ~~The applicant shall furnish an additional copy of the application to the clerk of the court of appeals who shall serve it on the attorney for the prosecution.~~ The attorney for the prosecution, within thirty days from the filing of the application, may file and serve affidavits, parts of the record, and a memorandum of law in opposition to the application.

(4) An application for reopening and an opposing memorandum shall not exceed ten pages, exclusive of affidavits and parts of the record. Oral argument of an application for reopening shall not be permitted except at the request of the court.

(5) An application for reopening shall be granted if there is a genuine issue as to whether the applicant was deprived of the effective assistance of counsel on appeal.

(6) If the court denies the application, it shall state in the entry the reasons for denial. If the court grants the application, it shall do both of the following:

(a) Appoint counsel to represent the applicant if the applicant is indigent and not currently represented;

(b) Impose conditions, if any, necessary to preserve the status quo during pendency of the reopened appeal.

The clerk shall serve notice of journalization of the entry on the parties and, if the application is granted, on the clerk of the trial court.

(7) If the application is granted, the case shall proceed as on an initial appeal in accordance with these rules except that the court may limit its review to those assignments of error and arguments not previously considered. The time limits for preparation and transmission of the record pursuant to App. R. 9 and 10 shall run from journalization of the entry granting the application. The parties shall address in their briefs the claim that representation by prior appellate counsel was deficient and that the applicant was prejudiced by that deficiency.

(8) If the court of appeals determines that an evidentiary hearing is necessary, the evidentiary hearing may be conducted by the court or referred to a magistrate.

(9) If the court finds that the performance of appellate counsel was deficient and the applicant was prejudiced by that deficiency, the court shall vacate its prior judgment and enter the appropriate judgment. If the court does not so find, the court shall issue an order confirming its prior judgment.

(C) **[Ruling upon application for reconsideration.]** If an application for reconsideration under division (A) of this rule is filed with the court of appeals, the application shall be ruled upon within forty-five days of its filing.

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO : TRIAL CASE NO. B-9700308
Plaintiff/appellee : APPEAL CASE NO. C-970788
 : APPEAL CASE NO. C-990066
vs. : EXHIBIT NO. 4
 :
RICHARD J. KLEIN pro se :
Defendant/appellant :

EXHIBIT NO. 4

Docket statement showing appellants indigency status.

APPEARANCE DOCKET

C 9900066

Print Date: 4/10/2001

Page 1
CMSR5143Attorney -
Attorney -
Judge -

R BERNARD MUNDY

64058

STATE OF OHIO vs. RICHARD KLEIN JR

Filed: 1/25/1999 A105 - NOTICE OF APPEAL - CRIMINAL - POVERTY AFFIDAVIT

Total Deposits \$0.00

Total Costs \$0.00

7200103 RICHARD KLEIN JR
Appellant(s)
vs.
7200102 STATE OF OHIO
Appellee(s)

OPTICAL AVAIL.	IMAGE	DATE	DESCRIPTION	AMOUNT
N		1/25/1999	NO DEPOSIT REQUIRED-POV.AFF. R BERNARD MUNDY	0.00
N		1/25/1999	APPEAL - ON QUESTIONS OF LAW	
N		1/25/1999	NOTICE OF APPEAL FILED.	
N		1/25/1999	COMMON PLEAS TRIAL COURT # B9700308	
N		1/25/1999	COPY SENT BY ORDINARY MAIL TO HAMILTON COUNTY PROSECUTOR	
N	7	2/09/1999	ORDER TO SHOW CAUSE	
		2/10/1999	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
N		2/16/1999	DOCKET STATEMENT FILED. B-9700308	
N	26	3/17/1999	ACCELERATED CALENDAR SCHEDULING ORDER, ENTERED. 04/12/99 RECORD DUE. 05/12/99 APPELLANT'S BRIEF DUE. 06/14/99 APPELLEE'S BRIEF DUE.	
		3/23/1999	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
N		4/02/1999	TRANSCRIPT OF DOCKET AND JOURNAL ENTRIES FILED	
N		4/02/1999	NOTICE OF FILING OF RECORD INCLUDING TRANSCRIPT OF PROCEEDINGS MAILED TO COUNTY PROSECUTOR AND R. BERNARD MUNDY	
N		4/02/1999	MOTION FOR AN ORDER EXTENDING TIME TO FILE APPELLANTS BRIEF B97-308	
N	23	4/06/1999	ENTRY GRANTING EXTENSION OF TIME TO FILE APPELLANT'S BRIEF UNTIL 06/12/99.	
		4/08/1999	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	
N		6/14/1999	BRIEF OF DEFENDANT-APPELLANT RICHARD JOSEPH KLEIN	
N		6/22/1999	MOTION TO EXTEND TIME TO FILE BRIEF OF PLAINTIFF-APPELLEE	
N	169	6/25/1999	ENTRY GRANTING EXTENSION OF TIME TO FILE APPELLEE'S BRIEF UNTIL 08/14/99.	
		6/28/1999	NOTICE OF ORDER OR JUDGMENT SENT BY ORDINARY MAIL TO ALL PARTIES REQUIRED BY LAW.	

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO

APPEAL NOS. C-970788
C-990066

Appellee,

vs.

ENTRY OVERRULING MOTION
TO REDUCE NUMBER OF COPIES

RICHARD J. KLEIN

Appellant,

This cause came on to be considered upon the PRO SE motion of the appellant filed herein to reduce the number of copies required by the appellate rules to enable him to file delayed reconsideration pursuant to App R. 26(B), and

The Court, upon consideration, thereof finds that the motion is not well taken and is overruled.

To The Clerk:

Enter upon the Journal of the Court on 6/30/00 per order of the Court.

By: [Signature]

Presiding Judge

(Copies sent to all counsel)

P. EXHIBIT E